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**FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case Reference : **CAM/34UF/OLR/2018/0064**

Property : **527 Obelisk Rise,
Northampton, NN2 8UF**

Applicant : **Ian Edward Pontin**

Representative : **HCB Park Woodfine LLP solicitors**

Respondent : **Orchard Block Management
Services Limited**

Representative : **Hart Brown Solicitors**

Type of Application : **Determination of costs under s60
and s91 Leasehold Reform,
Housing and Urban Development
Act 1993**

Tribunal Members : **Tribunal Judge Dutton
Miss M Krisko BSc (Est Man)
FRICS**

Date determination : **26th September 2018**

DECISION

DECISION

The Tribunal determines that the sum payable by the Applicant in respect of the Respondent's costs under the provisions of section 60 of the Leasehold Reform, Housing and Urban Development Act 1993 (the Act) is £1,703.40, together with the valuers fee of £925.20, both inclusive of VAT and in the case of the valuers fee, disbursements. The sum payable should be settled within 28 days.

BACKGROUND

1. This is an application for the determination of the costs payable by the Applicant to the Respondent under the provisions of section 60 of the Leasehold Reform, Housing and Urban Development Act 1993 (the Act). The costs arise from a notice under section 42 of the Leasehold Reform, Housing and Urban Development Act 1993 (the Act). The initial notice suggested a premium of £8,675.
2. The Respondent, replying by way of a Counter-notice under section 45 of the Act admitted the Applicant's right to seek a lease extension, put forward a different premium, £18,200 and indicated that the lease terms would be on similar terms as the existing lease, subject to any changes allowed under section 57 of the Act.
3. Terms of acquisition, save for the costs, were agreed with the premium settled at £10,350 and the wording of the lease also agreed.
4. The Respondent's costs are shown on a Schedule. This shows profit costs of £1,850 with VAT of £370. The valuers fee from Channer Morgan shows profit costs of £1,100, VAT of £220 and disbursements of £25.20 inclusive of VAT for copies of the Land Register for the property.
5. A schedule headed "Points of Dispute served by the Defendant" sets out the issues. We have completed the Points and it does not seem necessary for us to repeat the matters we have covered in the points of dispute, which form part of this Decision save where we consider it would assist the parties if we expanded on our findings.
6. In the bundle before us were copies of the Notices, the Schedule of costs, the Points in Dispute and some emails. One contained an explanation as to the Valuers fee, the contents of which we noted. We also noted that the valuer for the Respondent did not inspect the property but did say this in response to a query we raised:-

"I did not inspect the property prior to reporting. Considerable time was however spent working out that the flat comprises two bedrooms (something the tenant's valuer failed to do, then spent ages insisting it has one bedroom, including mentioning this in his evidence to the FTT). The tenant's valuer only finally accepted the flat has two bedrooms after

our mutual client freeholder inspected. Considerable additional costs were incurred on account of the tenant's valuer continue to argue the flat has one bedroom when it has two"

7. In addition to this late comment we received a copy of the invoice from Channer Morgan dated 22nd September 2017. The Respondent's also filed a late submission on 21st September 2018, the content of which we think the Applicant intended to object to but the email sent to the Tribunal is unclear on this point. We note the two cases exhibited which are both FTT cases and not binding upon us.
8. The provisions of section 60 are set out in the appendix and have been applied by us in reaching this decision.

FINDINGS

8. We shall explain the thinking behind some of the issues which need expansion from the comments made in the Points of Dispute. Firstly the hourly rates. The HMCTS guidelines indicate that the hourly fees for a Guildford Solicitor, at Grade A are £217, Grade B £192, Grade C £161 and Grade D £121. These rates are however based on 2010 figures although we believe may have been reviewed more recently but not, we think increased. In our finding there is no reason why the Respondent could not use solicitors in Guildford, if they are the firm usually used, which appears to be the case. We have seen the Terms of Engagement letter from Hart Brown, which supports the hourly rates shown on the Schedule of costs. We find that the hourly rates are reasonable for this work.
9. On the valuation fee we note the comment that the fee is approximately half of that which would normally be charged, see the email from Hart Brown (HB) to HCB Park Woodfine LLP (PW) seemingly dated 10th September 2018. The suggested hourly rate is £250. The valuer did not inspect although complains that the Applicant's valuer appeared to represent the property as a one bed-roomed flat, which was resolved by the Respondent inspecting. The suggestion was that much time was incurred because of this apparent dichotomy, apparently simply solved by inspection. We consider that three hours should have been sufficient time to deal with a desk valuation of a fairly simple matter and hence we allow £750 plus VAT for the valuers fee. The disbursements are recoverable as they do not appear to have been duplicated by HB.
10. No further issues have raised by PW in respect of the costs and we have accordingly confined our findings to those matters raised on the Points in Dispute
11. We therefore assess the fee payable by the Applicant to the Respondent under the provisions of s60 of the Act to be as follows:
 - Profit costs of £1,419.50 plus VAT of £283.90 total £1,703.40
 - Valuers fee of £925.20 inclusive

Andrew Dutton

Tribunal Judge Dutton

26th September 2018

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

The Relevant Law

60 Costs incurred in connection with new lease to be paid by tenant.

(1) Where a notice is given under section 42, then (subject to the provisions of this section) the tenant by whom it is given shall be liable, to the extent that they have been incurred by any relevant person in pursuance of the notice, for the reasonable costs of and incidental to any of the following matters, namely—

- (a) any investigation reasonably undertaken of the tenant's right to a new lease;
- (b) any valuation of the tenant's flat obtained for the purpose of fixing the premium or any other amount payable by virtue of Schedule 13 in connection with the grant of a new lease under section 56;
- (c) the grant of a new lease under that section;

but this subsection shall not apply to any costs if on a sale made voluntarily a stipulation that they were to be borne by the purchaser would be void.

(2) For the purposes of subsection (1) any costs incurred by a relevant person in respect of professional services rendered by any person shall only be regarded as reasonable if and to the extent that costs in respect of such services might reasonably

be expected to have been incurred by him if the circumstances had been such that he was personally liable for all such costs.

(3) Where by virtue of any provision of this Chapter the tenant's notice ceases to have effect, or is deemed to have been withdrawn, at any time, then (subject to subsection (4)) the tenant's liability under this section for costs incurred by any person shall be a liability for costs incurred by him down to that time.

(4) A tenant shall not be liable for any costs under this section if the tenant's notice ceases to have effect by virtue of section 47(1) or 55(2).

(5) A tenant shall not be liable under this section for any costs which a party to any proceedings under this Chapter before a leasehold valuation tribunal incurs in connection with the proceedings.

(6) In this section "relevant person", in relation to a claim by a tenant under this Chapter, means the landlord for the purposes of this Chapter, any other landlord (as defined by section 40(4)) or any third party to the tenant's lease.

TRIBUNAL REFERENCE: CAM/34UF/OLR/2018/0064

IN THE MATTER OF

LEASEHOLD REFORM HOUSING AND URBAN DEVELOPMENT ACT 1993 – SECTION 48

PREMISES - 527 OBELISK RISE NORTHAMPTON NN2 8UF

IAN EDWARD PONTIN

APPLICANT

and

ORCHARD BLOCK MANAGEMENT SERVICES LIMITED

RESPONDENT

POINTS OF DISPUTE SERVED BY THE DEFENDANT

Point 1 General point	Rates claimed for the Grade A, Grade B and Grade D Fee Earners are excessive. Reduce to £210, £170 and £110 respectively plus VAT.
	Receiving Party's Reply: These are standard rates for respective fee earners in this area of the country. Not agreed.
	Costs Officer's Decision: Please see paragraph 8 of the decision. We accept the hourly rates charged are reasonable
Point 2 Point of Principle	The time claimed for a Grade B Fee Earner for opening a file is excessive. This is an administrative task that is more appropriately conducted by an administrative assistant and not by a Fee Earner. This work should not have been recorded as chargeable work. Remove reference to this work from the schedule.
	Receiving Party's Reply: Agreed
	Costs Officer's Decision: The fee of £120 has been removed
Point 3	The time claimed for attendances on the applicant's Solicitors should be disallowed as it was unnecessarily incurred as a result of the respondent's Solicitors failing to release the valuation.
	Receiving Party's Reply: Not agreed. These were emails between the two solicitors

	providing surveyor's details and a telephone call in from the Applicant's Solicitor.
	Costs Officer's Decision: We do not consider that three attendances is unreasonable and allow £72
Point 4	The time allocated for the Grade A Fee Earner to review the Claim Notice and investigate the title, check validity is excessive. This work should have been reasonably allocated to the Grade B Fee Earner and the time should be reallocated accordingly.
	Receiving Party's Reply: Not agreed. It is our firm's policy that all notices are checked by the Head of Department.
	Costs Officer's Decision: It may be the firms policy but we find it surprising that the drafting of the Counter Notice is entrusted to Ms Johnson a Legal Executive. We assume this is because she is very experienced and capable of dealing with the important document which is the Counter Notice. That being the case the argument raised by the Applicant has merit. We allow £240 as the time does not seem unreasonable, being 10 unit in total.
Point 5	As far as the applicant's Solicitor is aware no deposit notice was ever drafted or served. As this is the case reference to this work should be removed from the schedule.
	Receiving Party's Reply: Not agreed. This was sent with our letter of 26.09.2017 – further copy attached.
	Costs Officer's Decision: There is a copy in the papers. The sum of £24 is allowed
Point 6	The time allocated to deal with amendments is excessive as the respondent's Solicitors have recently completed a lease extension on another flat within the same block and it is anticipated that they will be using essentially the same lease format with minor modification. The time allocated should therefore be reduced to 4 units.
	Receiving Party's Reply: We will agree to reduce this to 10 units
	Costs Officer's Decision: Inevitably the HB would need to review the existing lease and to check the proposed draft. 4 units is parsimonious. We accept the offer of reducing this to one hour as reasonable. There fore £240 is allowed
Point 7	The time claimed for closing a file is excessive. This work is also an administrative task which is better suited for an administrative assistant oppose to a Fee Earner. This should not have been recorded as chargeable work and reference to this should be removed from the schedule.
	Receiving Party's Reply: Agreed.
	Costs Officer's Decision: The fee of £46.50 has been removed

<p>Point 8</p>	<p>The valuation costs and disbursements are challenged on the basis that no breakdown has been provided and as such they may be excessive. A breakdown is requested and the applicant reserves the right to further challenge these costs.</p>
	<p>Receiving Party's Reply: We have requested this from our client's surveyor (now received and enclosed within the bundle)</p>
	<p>Costs Officer's Decision: Please see the findings at paragraph 9 of the Decision. Although no further challenge has been submitted we have considered this to be a question that has been raised and we have made the findings accordingly.</p>

Served on 17th July 2018 by HCB Park Woodfine LLP as solicitors for the Applicant